

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES MICHAEL PARKER,

Defendant.

CR 11-55-GF-BMM-JTJ

**FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant James Michael Parker (Parker) has been accused of violating the conditions of his supervised release. Parker admitted three of the four alleged violations. Parker's supervised release should be revoked. Parker should be placed in custody for a period of time served, with 16 months of supervised release to follow.

II. Status

Parker pleaded guilty to being a Felon in Possession of a Firearm on July 26, 2011. (Doc. 16). The Court sentenced Parker to 71 months of custody,

followed by 3 years of supervised release. (Doc. 23). Parker's current term of supervised release began on September 13, 2017. (Doc. 60 at 2).

Petition

The United States Probation Office filed a Petition on March 23, 2018, requesting that the Court revoke Parker's supervised release. (Doc. 60). The Petition alleges that Parker violated the conditions of his supervised release: 1) by using methamphetamine on two separate occasions; 2) by consuming alcohol; and 3) by committing another crime. (Doc. 60 at 2). United States District Judge Brian Morris issued a warrant for Parker's arrest on March 23, 2018. (Doc. 61).

Initial appearance

Parker appeared before the undersigned for his initial appearance on March 27, 2018. (Doc. 62). Parker was represented by counsel. Parker's counsel expressed concerns about Parker's competency. *Id.* The Court ordered that Parker undergo competency restoration procedures at a federal medical facility. *Id.* The competency restoration procedures have been completed. The United States Medical Center for Federal Prisoners informed the Court on October 23, 2018, that Parker was competent to proceed with his revocation hearing. (Doc. 70).

Revocation hearing

The Court conducted a revocation hearing on November 29, 2018. Parker

stated that he had read the petition and that he understood the allegations. Parker waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned. Parker admitted that he had violated the conditions of his supervised release: 1) by using methamphetamine on two separate occasions; and 2) by consuming alcohol. Parker did not admit or deny that he had committed another crime. The government did not attempt to prove that Parker had committed another crime. The violations that Parker has admitted are serious and warrant revocation of Parker's supervised release.

Parker's violation is a Grade C violation. Parker's criminal history category is IV. Parker's underlying offense is a Class C felony. Parker could be incarcerated for up to 24 months. Parker could be ordered to remain on supervised release for up to 25 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 6 to 12 months. Both Parker and the government requested a term of custody of time served.

III. Analysis

Parker's supervised release should be revoked. Parker should receive a custodial sentence of time served, with 16 months of supervised release to follow. The supervised release conditions imposed previously should be continued. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Parker that the above sentence would be recommended to Judge Morris. The Court also informed Parker of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Parker that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The Court **FINDS:**

That James Michael Parker violated the conditions of his supervised release by using methamphetamine and by consuming alcohol.

The Court **RECOMMENDS:**

That the District Court revoke Parker's supervised release and commit Parker to the custody of the United States Bureau of Prisons for a term of time served, with 16 months of supervised release to follow.

NOTICE OF RIGHT TO OBJECT TO FINDINGS AND RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in

part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

DATED this 4th day of December, 2018.



John Johnston
United States Magistrate Judge

